**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 4116 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**AJIT BAVANBHAI RABARI (MUSAR) & 1 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 2 - Respondent(s)**

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**Appearance :**

MR CJ VIN for Petitioner(s) : 1 - 2.

NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 13/02/2006**

**ORAL JUDGMENT**

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have prayed for appropriate writ,order and/or directions declaring the actions of the respondents of not issuing Caste Certificate to the petitioners, as illegal.

2. It is the contention on behalf of the petitioners that the petitioners belong to Scheduled Tribe Community. The petitioners and their forefathers hail from Rabari Community from Barada forest, Kharavira Ness, Taluka Ranava, District ; Junagadh. It is also the contention of the petitioners that by order dtd.14/5/1999, the Mamlatdar, Manavadar rejected the application submitted by the petitioners for

grant of Caste Certificate in favour of the petitioner certifying that the petitioners belong to Scheduled Tribe Community, against which the present petition has been preferred by the petitioners under Article 226 of the Constitution of India, for the reliefs as aforesaid.

3. While admitting the present petition vide order dtd.8/7/1999, the learned Single Judge of this Court (Coram : M.R.Calla, J.) granted interim relief directing that the candidature of the petitioner shall be provisionally considered for the purpose of admission to the engineering course against the seats reserved for the Scheduled Tribe Community. This Court also observed that the said order would not confer any right or equity in favour of the petitioner and the said order would enure the benefits of the provisional admission in favour of the petitioners only if this Court passes any order

after hearing the concerned Mamlatdar as to whether in fact and in the eye of law, the petitioners should be treated as members of the Scheduled Tribe.

4. Today, when the matter is called out for final hearing, Mr.Prachchhak, learned AGP has submitted that considering the various complaints now the State Government has decided that against the order passed by the concerned Mamlatdar refusing to grant caste certificate, an appellate and monitoring authority is constituted and the Collector of the concerned district is appointed as an appellate and monitoring authority. He has produced on record xerox copy of the Government Resolution dtd.30/9/2005 of Tribal Development Department which is ordered to be taken on record.

5. Considering the said resolution,it

appears that the said authority is appointed so that the Collector can properly verify the evidence and even the applicant can also be heard and the Collector is required to pass reasoned order. The question as to whether the petitioner hail from The petitioners and their forefathers hail from Rabari Community from Barada forest, Kharavira Ness, Taluka Ranava, District ; Junagadh and belong to Scheduled Tribe, is required to be appreciated on leading proper evidence and/or on appreciation of evidence and it will be appropriate to relegate the present petitioners to approach the appellate and monitoring authority i.e. the Collector, Junagadh for redressing his grievance against the impugned order passed by the Mamlatdar, Manavadar dtd.14/5/1999, as per the Government Resolution of Tribal Development Department dtd.30/9/2005. In case, the petitioners approach the Collector, Junagadh, to direct the Collector, Junagadh to

pass appropriate order in accordance with law and considering the G.R.dtd.30/9/2005.

6. Under the circumstances, the petitioner is relegated to approach the Collector, Junagadh within a period of FOUR WEEKS from today challenging the order passed by the Mamlatdar, Manavadar dtd.14/5/1999. In case such application / appeal is submitted by the petitioner before the Collector, Junagadh within a period of four weeks from today, the Collector, Junagadh is directed to decide the same on merits and pass an appropriate reasoned order in accordance with law and on merits, considering the Government Resolution dtd.30/9/2005 of Tribal Development Department, State of Gujarat, within a period of FOUR WEEKS thereafter and shall also communicate the copy of the order to the petitioners. Until then the interim order passed by this Court dtd.8/7/1999 with the conditions mentioned

therein, is directed to be continued. Meaning thereby, if the candidature of the petitioner is considered provisionally for the purpose of admission to the Engineering Course against seats reserved for the Scheduled Tribe Community, the same shall be continued subject to the order that may be passed by the Collector, Junagadh as aforesaid and the same shall be continued till the Collector, Junagadh takes an appropriate decision as stated hereinabove and the order.

7. With the aforesaid observations and directions, the petition stands disposed of.

(M.R.SHAH,J.)

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